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\* Admitted only in Virginia  
\* Practice Limited to  
Federal Agencies

May 30, 2003

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Re: U.S. Utility Patent Application  
Appl. No. 09/719,002; § 371 Date: August 1, 2001  
(U.S. National Phase of Int'l. Appl. No. PCT/GB99/01949; I.A. Filed: June 21, 1999)  
For: **Inducible Promoters**  
Inventors: DRAPER *et al.*  
Our Ref: 0623.0960000/LBB/GLL  
Art Unit: 1638

Sir:

In response to the Office Action mailed April 30, 2003, transmitted herewith for appropriate action are the following documents:

1. Reply To Restriction Requirement; and
2. One return postcard.

It is respectfully requested that the attached postcard be stamped with the date of filing of these documents, and that it be returned to our courier. In the event that extensions of time are necessary to prevent abandonment of this patent application, then such extensions of time are hereby petitioned.

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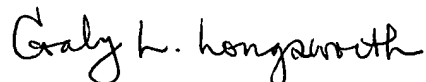
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Commissioner for Patents  
May 30, 2003  
Page 2

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Gaby L. Longsworth  
Agent for Applicants  
Registration No. 47,756

LBB/GLL/eaf  
Enclosures

SKGF\_DC1:139393.1



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

DRAPER *et al.*

Appl. No. 09/719,002  
(Natl. Phase of Intl. Appl. No.  
PCT/GB99/01949; I.A. filed June 21, 1999)

§ 371 Date: August 1, 2001

For: **Inducible Promoters**

Confirmation No. 3751

Art Unit: 1638

Examiner: Collins, C. E.

Atty. Docket: 0623.0960000/LBB/GLL

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**Reply To Restriction Requirement**

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action dated April 30, 2003, requesting an election of one invention to prosecute in the above-referenced patent application, Applicants hereby provisionally elect to prosecute the invention of Group I, represented by claims 1 to 5 and 10 to 23. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

This election is made *with traverse*. Applicants respectfully traverse the restriction requirement as it applies to Groups I, II and III. The Examiner alleges that the inventions are not linked by the same or corresponding special technical feature so as to form a single general inventive concept under PCT Rule 13.1. However, even where patentably distinct inventions appear in a single application, restriction remains improper unless the Examiner can show that the search and examination of the groups would entail a "serious burden." *See* MPEP § 803 at 800-3 (Aug. 2001). In the present situation, the Examiner has failed to make such a showing.

Groups I, II, and III are all drawn to isolated DNA molecules comprising a certain promoter(s). Group I DNA molecules comprise an inducible pathogenesis-related protein gene promoter, Group II DNA molecules comprise a chimeric promoter, and Group III DNA molecules comprise at least the two promoters of Groups I and II arranged in series. Applicants submit that a search for the Group I promoter would clearly also provide useful information on the Group II and Group III promoters. Thus, the inventions of Groups I, II, and III are clearly linked, and the search and examination of the groups would not entail a "serious burden."

Reconsideration and withdrawal of the restriction requirement, and consideration and allowance of the pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

*Gaby L. Longworth*

Gaby L. Longworth, Ph.D.

Agent for Applicants

Registration No. 47,756

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